Supreme Court, U.S.
FILED
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No. _____

In The Supreme Court of the United States

DAVID A. RAMEY, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW
FOR REVIEW

1. Does the delay of eighteen months between the time of the offense and the indictment result in a prejudicial lack of due process of law where the offense is the undercover purchase of illegal drugs with no indication to the seller he is under investigation so that he can not recollect the event of where he was and what he was doing on the day of the offense when ultimately indicted?

2. Does an additional delay of twenty-two months from the time of the indictment which was kept under seal until the time of the arrest when the accused was never in hiding and his whereabouts always known violate the speedy trial clause to the Sixth Amendment of the Constitution of the United States as well as the due process clause of the Fifth Amendment of said Constitution?

NAME OF PARTIES

The names of all parties to this case appear in the caption.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1999

DAVID A. RAMEY, JR.,

Petitioner

V.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI

The Petitioner, DAVID A. RAMEY, JR., prays a writ of certiorari be issued to review the judgment rendered in this case by the United States Court of Appeals for the Fourth Circuit on November 4, 1999 by reason of the following. For convenience, the Petitioner is referred to as "Ramey"; and the Respondent is referred to as 'Government". Page references to the joint appendix filed in this case in the Fourth Circuit are preceded by the letter "A".

I. CITATION OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN CASE BY COURTS

The United States Court of Appeals for the Fourth Circuit rendered an unpublished decision on November 4, 1999 affirming the judgment of the United States District Court for the Western District of Virginia at Roanoke, Virginia, on April 15, 1999. Said decision is transcribed in the appendix of this petition at page App. 1.

II. STATEMENT OF BASIS OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was entered on November 4, 1999 within ninety days of filing this petition. There has been no order for rehearing. No Act of Congress has been drawn in question. The statutory provision believed to confer on this Court jurisdiction to review by a writ of certiorari to judgment of the United States Court of Appeals for the Fourth Circuit in this criminal action is 28 U.S.C. § 1254(1).

III. STATEMENT OF CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the due process clause of the Fifth Amendment and the Speedy Trial Clause on the Sixth Amendment of the Constitution of the United States granting certain rights to an accused in criminal cases. Specifically the United States Constitution, Amendment V, states:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or navel forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, **nor be deprived of his life, liberty or property without due process of law**; nor shall private property be taken for public use, without just compensation." (Emphasis supplied)

United States Constitution, Amendment VI, states:

> **"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial**, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted by the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (Emphasis Supplied)

IV. STATEMENT OF THE CASE

Ramey was charged with two counts of violating 21 U.S.C. 841. These are criminal offenses against a sovereign Government and jurisdiction for indictment and trial is in the United States District Court for the Western District of Virginia pursuant to 18 U.S.C. 3231. Appeal from said district court is a matter of right and is to the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. 1291. This particular appeal is from a final judgment in a district court on April 15, 1999 pursuant to a conditional plea agreement under Rule 11 (a)(2) of the Federal Rules of Criminal Procedure whereby Ramey reserved the right to appeal on the sole limited issues of whether a delay between the time of the offense and indictment and also the delay between the time of the indictment and the arrest violated his constitutional right to a speedy trial and due process of law. Ramey filed his notice of appeal on April 15, 1999 (A-57) or the day of the final judgment by the trial court; and the appeal was timely prosecuted in the United States Court of Appeals for the Fourth Circuit.

Ramey allegedly sold a quantity of cocaine to an undercover police informant on May 19, 1994 and again on May 25, 1994. In order for the Government to use the undercover informant for more of such cases, the informant did not come from undercover and Ramey was not indicted until November 8, 1995 or the elapse of eighteen months. The

particular indictment was in two counts for the respective offenses on May 19, 1994 and May 24, 1994 and named no one else and was under seal. Ramey was arrested in Pennsylvania in November 1997 for a traffic offense when it was discovered he was wanted by federal authorities in Roanoke, Virginia; and a warrant for his arrest was issued on February 28, 1998. At the time of his arrest, Ramey was living in Pennsylvania away from any former associates in the drug trade and stated he had no recollection of making either sale in May 1994 or any other time. The indictment was unsealed on February 20, 1998 when Ramey was arraigned and for whom a defense attorney was appointed by reason of his indigence. This court appointed attorney filed a motion on March 26, 1998 for dismissal of the indictment because of the delay. After some continuances, the trial court held the delay did not violate the Speedy Trial Clause of the Sixth Amendment holding:

> (a) The time between the indictment and the arrest was uncommonly long;
>
> (b) While the Government showed unimportance of the case, the Government was only minimally negligent;
>
> (c) While there was some delay between the time Ramey was arrested until he made the motion on March 26, 1998, that factor did not weigh heavily against him; but
>
> (d) Ramey articulated no factors which would suggest prejudice beyond a generalized delay.

When present counsel became counsel of record, he filed a motion to revisit this issue and also a motion to dismiss for the additional delay between the offense and the indictment; and this motion was denied summarily without giving Ramey a chance to testify or articulate how the delay prejudiced him. Because Ramey was unable to recollect anything about the case, he executed the plea agreement conditioned on retaining the right to appeal because of the delay between the time of the offense and indictment and the time of the indictment and the arrest; and at the sentencing hearing, it became clear Ramey did not recollect the offenses and the trial judge reversed certain findings of fact dealing with this sentence because of this; and these findings of facts support the prejudice by the delay. When counsel argued because Ramey was willing to plead guilty when he could not remember doing it, he was making the ultimate acceptance of responsibility for which he should receive credit under the sentencing guidelines, the trial judge held:

> "In the drug culture, when something like this happens, it is almost... its better than having CNN run news on it, it just spreads like wildfire. I just don't think Mr. Ramey qualifies because he has not come forward, did not come forward when Ms. Dillon was representing him, did not come forward when present counsel represented him." (A-44)

After learning the indictment remained sealed, the trial judge then held:

> "I think that throws a little different light on the

situation... All right, I'm going to grant the objection and give you two points credit for accepting responsibility." (A-46)

V. ARGUMENT FOR GRANTING PETITION FOR WRIT OF CERTIORARI

This case shows an extreme or high degree of injustice of the prosecution of Ramey by the Government and cries for a review.

POINT ONE: THE DELAY BETWEEN THE TIME OF THE OFFENSE AND THE INDICTMENT CAUSED PREJUDICE TO RAMEY.

In this particular case, Ramey was not told by the undercover agent at the time of making the purchases that Ramey had made the sales to a Government informant. He had no way of knowing he was a suspect. By the time of the indictment, or eighteen months later, Ramey had clearly forgotten the incident (if it ever occurred), and the only reason for the delay was for the benefit of the Government to use the undercover agent to investigate different persons for illegally selling drugs. When the Government has all the information to make the charge and delays making the charge for more than six months and the only evidence is testimony by a police officer who relies on notes, the delay automatically results in a lack of due process. *Ross v. United States,* 349 F.2d *210.* (1965); and *Woody v. United States,* 370 F.2d 214 (1967). These two decisions were attached to the motion for reconsideration. Because the Government delayed the indictment to investigate other cases, it benefited

to the prejudice of the accused. Consequently this delay of eighteen months between the offenses and the indictment is sufficient, standing alone, to require dismissal.

POINT TWO: THE DELAY BETWEEN THE TIME OF THE INDICTMENT AND THE ARREST CAUSED PREJUDICE TO RAMEY.

Ramey primarily relies on *Doggett v. United States*, 505 U.S. 647 112 S.Ct. 2686, 120 L.2d 520 (1992). The trial court also followed this decision. Following the four inquiries suggested by *United States v. Grimmond*, 173 F.3d 823, 827 4th Cir. (1998), the trial court held in favor of Ramey on the three issues but then held Ramey had:

> "Articulated no additional factors that would suggest his constitutional rights were violated other than the most general allegations of prejudice."
> See page 5 and Appendix page 8.

This is a misinterpretation of *Doggett* where this Court held:

> "The Government is left, then, with its principal contention: that Doggett fails to make out a successful speedy trial claim because he has not shown precisely how he was prejudiced by the delay between the indictment and the trial. 120 L.2d at page 529

Thus this Court decided that delay alone is sufficient in an extreme case. The dissent scoffs at this and states there should be no dismissal unless the delay causes prejudice; and

the dissent further contends that prejudice by the delay is protected by the due process clause. Even though it may be preferable to call all prejudice a lack of due process, such prejudice definitely existed in this case regardless of whether it violated the speedy trial clause or the due process clause.

Ramey did go further and did articulate additional facts of prejudice other than general allegations. He can not remember detailed events in May 1994. A reasonable person can not remember in 1998 where he was in 1994 unless the events of 1994 were called to his attention at the time. For example, if a man went into a room and found his wife dead and police suspected him of murder but could not prove it, he would remember the incident. If scientific advances, such as DNA testing, later proved his guilt which could not have been proved by scientific accomplishments at the time of the offense, he would not be prejudiced by any loss of memory. He would know of the incident, remember the incident and remember the investigation. Here Ramey does not recall the incident, has no way of recalling the incident, and it is not unreasonable that he will ever recall the incident, if it did occur.

While the trial court and the appellate court seemed to hold the Government was without fault in the second prong of test invoking the Speedy Trial Clause, Ramey argues the Government was grossly negligent. The mere fact that no particular individual had bad faith is beside the point. The Government controlled the prosecution. There is no level playing field until the accused knows he is a suspect. Waiting eighteen months before the indictment so the undercover seller can catch more crooks may be beneficial to

the Government but prejudiced to the accused and the delay is intentional. Keeping the indictment sealed without attempting to find Ramey was also unacceptable. If this case was so unimportant to the Government, then why was it not dismissed? The overt carelessness is tantamount to bad faith.

Finally a reason for the Speedy Trial Clause in addition to the Due Process Clause is the punishment for the crime should occur during the general time frame of the offense. Here Ramey left Virginia and moved to Pennsylvania to be away from the drug culture. He made a new life and home for himself. After being rehabilitated, he is then told of a secret indictment for an offense years ago. A purpose of incarceration years ago would have been rehabilitation. He is now rehabilitated and there is less need to incarcerate him. The result is to take an honest and law abiding citizen from society with no valid reason beneficial to society. If he had escaped and then rehabilitated himself while avoiding police, then punishment would be necessary to deter hiding from the law for years. In this case, Ramey had no knowledge he was suspect and to take him out of society after he had been completely reformed is a travesty of justice.

The argument in the Government's brief in the Fourth Circuit does not support the conviction. The Government argued the motion to dismiss the indictment on Sixth Amendment grounds was properly denied citing *United States v. Grimmond, supra,* Yet the facts in this case are quite different from *Grimmond.* There the Fourth Circuit held that to hold the Government responsible for an improper delay, it must consider the reason. There Grimmond knew very shortly after the crime that the Government was considering charges

against him and he knew what those charges were. The delay was because of state court proceedings. He was indicted jointly with a Mr. Heath and the two were tried together. In effect, the state trial was part of the legal procedure of which Grimmond was aware step by step. Here Ramey had no knowledge of the offense and the delay was not because he was prosecuted by some other jurisdiction.

The Government also states Ramey failed to demonstrate how the delay caused his actual prejudice in presenting a defense citing *Jones v. Angelone,* 94 F.3d 900 906 (4th Cir. 1996). There Jones had shot and killed his mother. Virginia authorities began looking for him to charge him with the murder. They did not find him until he was arrested in New York for robbery. Virginia authorities went to New York and made effort after effort to have Jones returned. He was tried for robbery in New York and held for ten year before being released and then returned to Virginia. During this entire ten year period, Jones was well aware of the charge and could have spent the entire ten years developing his defense. Here Ramey was not withheld from the Government because of other prosecutions, did not know of the offense, had no reason to recollect the facts or prepare a defense. Finally in arguing Ramey must support four separate factors weighing in his favor, the Government cites *United States V. Thomas,* 55 F 3d 144 4th Cir (1995). First there is no question the delay in Ramey's case was uncommonly long thereby triggering an issue of speedy trial. Next the Government argues that while the delay was caused by the Government's lack of diligence, it was not acting in bad faith because Ramey had "moved several hundred miles away making him more difficult to find". Yet there was no evidence the Government even attempted to find him by

going to his prior address. If he had not been arrested on traffic charges in Pennsylvania, he may have gone another ten years before he knew about it. His address in Roanoke was his mother's address and no one ever went to her house to ask her where he was. The Government simply neglected the case and now wants convictions.

VI. CONCLUSION

The Petitioner, David A. Ramey, Jr., respectfully requests this Court to grant his petition for a writ of certiorari to review the erroneous decision of the United States Court of Appeals for the Fourth Circuit on November 4, 1999; and thereby permit the Petitioner to present these issues of delay to the entire Court on a complete record.

Respectfully submitted,
DAVID A. RAMEY, JR.

By Counsel

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Counsel for Petitioner

VII. APPENDIX

The Appendix consists of:

(1) The opinion of the United States Court of Appeals for the Fourth Circuit on November 4, 1999 beginning on page 1; and

(2) An opinion of a judge of the United States District Court for the Western District of Virginia on July 9, 1998 beginning on App. 4.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

United States of America

Plaintiff-Appellee,

v. No. 99-4267

David A. Ramey Jr.,

Defendant-Appellant:.

Appeal from thc United States District Court
for the Western District of Virginia, at Roanoke.
Jackson L. Kiser, Senior District Judge.
(CR-95- 126)

Submitted: October 8, 1999

Decided: November 4, 1999

Before WIDENER, MURNAGHAN, and WILKINS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

John II. Kennett. Jr., Roanoke, Virginia, for Appellant. Robert P. Crouch. Jr.. United States Attorney, Anthony P. Giorno, Assistant United States Attorney. Roanoke, Virginia, for Appellee.

OPINION

PER CURIAM:

David A. Ramey, Jr., appeals his conviction for two counts of distribution of cocaine base in violation of 21 U.S.C. § 841 (a)(l) (1994). On appeal, Ramey contends that the twenty-two month delay between the date the indictment was returned and his arrest violated his Sixth Amendment right to a speedy trial. Ramey also contends that the eighteen month delay between the date of the two incidents of drug distribution and the return of the indictment prejudiced his defense. Finding no reversible error, we affirm.

We find there was no Sixth Amendment violation. The delay between the date the indictment was returned and Ramey's arrest was long enough to trigger the speedy trial analysis set forth in *Barker v. Wingo,* 407 U.S. 514, 530 (1972). *See Doggett v. United States.* 505 U.S. 647, 651-52 (1992). While it appears that the Government did not aggressively seek Ramey's arrest after he moved to Pennsylvania. there was no evidence or suggestion that the Government was in possession of information as to Ramey's whereabouts that it disregarded. On the other hand, by waiting several months after learning at the indictment to assert his Sixth Amendment right. Ramey was himself dilatory. Finally, Ramey failed to show how he was prejudiced by the delay. *See Barker,* 407 U.S. at 530. This factor was highly significant because none of the remaining factors weighed strongly against the Government. Accordingly, we find no infringement of Ramey's right to a speedy trial.

We also find that the delay between the distribution incidents and the return of the indictment did not violate Ramey's right to due process. Ramey's failure to show how he was actually prejudiced by the delay was singularly dispositive of this claim. *See Jones v. Angelone* 94 F.3d 900, 905-06 (4th Cir. 1996).

Accordingly, we affirm the district court's judgment of conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,	Criminal Action
v.	95—126—R
	Memorandum Opinion
DAVID A. RAMEY, JR.	By: Jackson L. Kiser, Senior United States District Judge

The defendant's motion to dismiss the indictment pursuant to the Speedy Trial Act, 18 U.S.C. 3161 et seq. is currently before the court. The parties have been heard at oral argument and the matter is therefor ripe for decision. For the reasons discussed below, I am of the opinion that the defendant's motion should be DENIED.

I. Background

On November 8, 1998, a grand jury sitting in Roanoke, Virginia returned an indictment charging the defendant David A. Ramey ("Ramey") with two counts of crack cocaine distribution. The alleged offenses underlying the charges were committed in May 1994. Some time around

when the indictment was returned, Ramey moved away from the Roanoke area, allegedly with out any knowledge of the indictment. In or about October 1997, Ramey was pulled over for a traffic violation in Pennsylvania. It was at this point, Ramey maintains, that he first learned of the indictment.

II. The Motion To Dismiss

Although the defendant's motion references the Speedy Trial Act, at oral argument on the matter the defendant effectively conceded that no violation of the Act has occurred. The statute clearly states that the clock does not begin to run under the Act until the latter of the (1) filing of the indictment or (2) the appearance of the defendant before a judicial officer. See 18 U.S.C. 316(c)(1). Because the defendant's appearance occurred after the filing of the indictment, the appearance date started the Speedy Trial Act clock. The defendant has not asserted that the delay between the trial and his appearance violated the Act. As a result, the defendant's motion is denied to the extent it relies on the Speedy Trial Act.

B. The Sixth Amendment's Speedy Trial Clause

The Sixth Amendment to the Constitution provides other protections against delay in a criminal prosecution. See *Doggett v. United States*, 505 U.S. 647,651(1992) ("In all criminal prosecutions, the accused shall enjoy the right to a speedy... trial...") (quoting U.S. Const. Amend. VI). At oral argument, it became clear that the defendant's claim is actually one under the Sixth Amendment.

As *Doggett* and subsequent cases make clear, the Sixth Amendment analysis involves four distinct inquiries: (1) whether the delay was uncommonly long; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the delay prejudiced the defendant. *United States v. Grimmond*, 173 F.3d 823, 827 (4th Cir. 1998).

1. Length of the Delay

"The first factor also acts as a threshold requirement [:] If the delay is not uncommonly long, the inquiry ends there." Id (citations omitted). Ramey was indicted in November 1995, so the delay in bringing him to trial now exceeds thirty months. The Supreme Court had implied that any delay over one year is "presumptively prejudicial." *Doggett*, 505 U.S. at 652 n.l. In *Grimmond*, the Fourth Circuit indicated that a thirty-five month delay was "too long". 173 F.3d at 827. The Fourth Circuit has repeatedly held that delays in the two to three year range are too long. See, e.g. *United States v. Johnson*, 732 F.2d 379 (4th Cir. 1984) (two year delay). In summary, I find that the thirty month delay in this case was uncommonly long.

2. Reason for the Delay

There is little evidence in the record regarding this factor. The defendant asserts that had the government expended any effort to find him they would have promptly done so. As evidence of this, Ramey claims that he received Social Security payments and had a checking account under his name. The government did little to explain the reason for

the delay, stating only that it was not "deliberate". As the Supreme Court noted in *Doggett*, "the Government's lethargy may have reflected no more than [the defendant's] relative unimportance in the world of drug trafficking." 505 U.S. at 653. Although the government could have been more diligent in searching for Ramey, the record also reflects that Ramey moved several hundred miles away, making him more difficult to find. I find that the government was no more than "minimally negligent" in its pursuit of Ramey. *United States v. Smith*, 35 F.3d 558, 1994 WL 48 1927 (4th Cir.1994) (unpublished). The second factor, therefore, weighs against the government, but not heavily. See e.g. *Robinson v. Whitley*, 2 F.3d 562, 569 (5th Cir. 1993), cert. denied, 114 S.Ct. 1197 (1994) ("a 'neutral reason' such as negligence weighs less heavily against the state"); *Hakeem v. Beyer*, 990 F. 2d 750, 766 (3rd Cir. 1993) (same).

3. Assertion of the Right to a Speedy Trial

Ramey alleges that he was not aware of the indictment until October 1997. The government has not disputed this assertion. Had Ramey known of the indictment, the third factor would weigh heavily against him. *Doggett*, 505 U.S. at 653. Still, there was some delay on his part; Ramey learned of the indictment in October 1997 but did not file the instant motion to dismiss until March 26, 1998. On the whole, however, I find that this factor does not weigh heavily in either direction.

4. Prejudice

Where the length of delay and degree of government culpability are minimal, the defendant's need to make a particularized showing of prejudice is heightened. Here the defendant has stated only that "[t]he delay in charging works to the detriment of the defendant's ability to defend." Ramey has "articulated no additional factors that would suggest that his constitutional rights were violated other than the most general allegations of prejudice." *United States v. Riley*, 991 F.2d 120 (4th Cir.1993). Such generalized allegations are insufficient to establish prejudice. Id: See also *Nelson v. Hargett*, 989 F.2d 847, 853 (5th Cir. 1993) (stating that conclusory and "vague allusions" to the absence of witnesses and the memory loss of others "are insufficient to establish prejudice under Barker and its progeny"); *Hakeem*, 990 F.2d at 763 (stating that "[g]eneral allegations that witnesses' memories have faded are insufficient to create prejudice, at least absent extreme delay such as eight and one-half years, or the special circumstances that existed in *Doggett*").

III. Conclusion

For the reasons stated above, the defendant's motion to dismiss is DENIED.

An appropriate order shall issue.

s/ Jackson L. Kiser
Senior United States District Judge